



Department of Planning and Community Development

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Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
Michelle Lauria, Member

APPROVED

Braintree Planning Board
January 11, 2011
Town Hall

Present:

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami
Michelle Lauria

Melissa Santucci, Principal Planner

The Chair called the meeting to order at 7:15 P.M. and called the roll: Ms. Lauria, Mr. Mikami, Mr. Eng, Mr. Reynolds and Mr. Harnais all present.

New Business/Old Business

Zoning Board of Appeal Petitions – January

Request for Relief from Bylaw Requirements under Chapter 135, Article 4, Sections 135-403, 407, Article 7, Section 701
#11-01

Applicant Tony Tran, of 51 Somerville Avenue, Braintree, MA 02184, was present to request relief from the above Zoning Bylaw requirements for construction of a 10 ft. x 22 ft. deck that does not meet the rear line setback.

It was noted to the Planning Board by Ms. Santucci that there was a discrepancy with the size of the deck. While both the Application and the Legal Notice states that the deck is to be 10 ft. deep by 22 ft. wide, the deck shown on the As-Built Plot Plan submitted is 10.4 ft deep by 26 ft. wide.

Mr. Tran addressed the Planning Board. He apologized for his language barrier and presented the Board with a letter, from which he read, describing the situation. The written statement describes the unsafe condition of the old deck and the financial hardship that building the new deck put on his family. The document stresses that the new deck was built for safety. It also explains that there was a lack of knowledge of the Zoning Board and permit requirements, and that the deck therefore had been

constructed with out obtaining the proper permit. Mr. Tran asked the Planning Board to let him and his family keep the deck as it has been built and to maintain it.

John Turner, a long time friend of Mr. Tran's, took the floor and addressed the Planning Board. Mr. Turner, as a character reference, stated that he has known Mr. Tran for 10 years. He also expressed concern over 3 problems (discrimination, harassment and intimidation) he felt were connected with Mr. Tran's situation. Mr. Turner said that someone informed the Inspector's Office of the situation with the deck and that an Inspector had showed up at the Tran's address and 'demanded' to be let in to the house.

The Chair informed Mr. Turner and Mr. Tran that the Town is run by ordinances and setback requirements, and that in its usual course of business, the Building Department has to enforce these ordinances. He stated that although residents may not be aware of set backs, they have to abide by them.

Ms. Lauria asked Mr. Tran if there had been a deck there prior to the construction of the new deck. Mr. Tran replied that there was. She also asked if the new deck was larger. Mr. Tran said that it was. Ms. Lauria wanted to know why the new deck was bigger than the previous deck. Mr. Tran explained that he had a large family and that he wanted a safe place for his children to play, and he felt that the old deck was to small.

Mr. Tran gave an emotional plea to the board, describing various situations his family has endured. The Chair informed him that the circumstances he described would not be tolerated by this Board or any Braintree Official, however they had to stay on focus with the situation concerning the deck.

Ms. Lauria questioned if he had received a plot plan when he purchased the property. He had not.

Mr. Mikami wanted to determine if Mr. Tran fully understood the problem with the size discrepancy, not meeting the set back requirements and if his friends had mentioned anything regarding obtaining permits.

Mr. Reynolds again stressed the need to focus on the issue of the deck and that the Planning Board was in a difficult situation. He informed Mr. Tran that the set backs were in place to keep the negative impact to both him and his neighbors in check.

The Chair explained that there can be exceptions to these if adequate hardship is presented. He told Mr. Tran that the Board gives recommendations to the Zoning Board of Appeal, and that what is determined tonight is not the end of the story. It is difficult however to vote in favor as the hardships that Mr. Tran has presented (financial etc.) are not the sort of hardships that the Board can act upon. Those would be issues related to soil conditions, and shape or topography of the land or structure. The Zoning Board would have the ultimate authority to decide on this situation.

There then ensued a lengthy discussion regarding the size of the deck (which scaled to 10.4 ft. by 26 ft.) on the stamped and signed plans that had been presented to the Planning Department. Mr. Tran continued to insist that the plans were incorrect and that the deck was actually 22 ft.

Mr. Reynolds wanted to be sure that both Mr. Tran and Mr. Turner understood the violation. He also wanted to know if there was any record of a permit for the previous deck as that would have helped Mr. Tran's situation. Mr. Tran said that there was no history of the past deck. Mr. Reynolds said that for safety reasons, he was able to have a back staircase however the size of the deck is well beyond safety standards.

Mr. Turner questioned if the 30 ft. setback from property lines were for all houses. The Chair explained that if the Zoning Department had granted a variance then it is ok to not meet the setback. It was pointed out that if the deck had been constructed at a smaller size it could have met the setback requirements.

Ms. Santucci stated that it was possible that the Zoning Board could act favorably on this situation and she suggested that Mr. Tran talk to Russ Forsberg in the Building Department.

The discussion again turned to the fact that the plan submitted did not match the Application or the legal notice. Mr. Tran continued to insist that the plan was wrong. Mr. Eng said that the Board was not going to act on a plan that is inaccurate. The Chair stated that if Mr. Tran was indeed saying that the signed and stamped plan was wrong, he suggested that he withdraw his application from the Board vote and resubmit. Both the Chair and Ms. Santucci told Mr. Tran to call the building department.

No vote taken.

Request for Relief from Bylaw Requirements under Chapter 135, Article 4, Sections 135-403, 407, Article 7, Section 701
#11-03

Applicants Kathleen Carroll and John Frazier, of 21 Judson Street, Braintree, MA 02184, were present to request relief from the above Zoning Bylaw requirements to demolish an existing (18 ft. by 10 ft.) garage and to replace it with a larger (22 ft. by 14 ft.) garage.

The Applicants addressed the Planning Board and said that this was their second winter in this house and that they were finding the current garage to small to accommodate a car and various pieces of equipment (snow blowers etc.).

Ms. Lauria questioned how much larger they intended to make the new structure. It was explained that the new garage would extend 4 more ft. into the yard as well as 4 more ft. toward the street.

Mr. Mikami asked Ms. Carroll and Mr. Frazier why they wouldn't just move the site of the new structure to accommodate the setbacks. Ms. Santucci informed them that if they move the placement and meet the setback requirements then no appeal would be needed. She asked them if there was an existing slab floor and if this was going to be taken up when the new garage was built. Ms. Carroll and Mr. Frazier said that this was indeed the case.

Ms. Santucci said that if this was true and they moved the structure to meet the setbacks then there was no appeal needed.

No vote taken.

Request for Relief from Bylaw Requirements under Chapter 135, Article 4, Sections 135-403,407, Article 7, Section 701 #10-41

Applicant, Eugene Caruso, of 282 Middle Street, Braintree, MA 02184, was present to request relief from the above Zoning Bylaw requirements to convert the attic of the existing dwelling to 3rd floor habitable space.

Mr. Caruso took the floor to address the Planning Board. He first spoke to Mr. Eng, telling him that he had been correct at the previous Planning Board meeting (Tuesday, December 14, 2010) when he commented that the drawings presented had not been to scale. Regarding the drawings presented now, Mr. Caruso said that the gabled roof would keep the same aesthetic view.

Mr. Mikami questioned what the pitch of the new roof would be. Mr. Caruso said that the new pitch was 5/12 and that the old pitch had been 4/12. Mr. Mikami wanted to know why the applicant had not invested in better drawings, stating that the same issue had come up in the previous meeting. Mr. Caruso said he would have them when he gets the actual construction drawings. Mr. Mikami stated that it was in his best interest for the Planning Board to get accurate drawings.

Ms. Santucci stressed that Mr. Caruso achieve the 5/12 pitch while remaining under the 35 ft. height limit.

Motion by Mr. Reynolds, second by Mr. Eng to grant relief for the conversion of the attic to habitable space based on the revisions, with an emphasis on obtaining better plans.

Vote: 5/0

Request for Relief from Bylaw Requirements under Chapter 135, Article 4, Sections 135-403, 407, Article 7, Section 701
#11-04

Applicant, Dennis Malloy, of 10 Song Sparrow Lane, Duxbury, MA 02332, was present to request relief from above Zoning Bylaw requirements for maintaining existing footprint and raising roof, and constructing full second story, on the property located at 20 Judson Street, Braintree, MA 02184.

Mr. Malloy, representing the homeowner, addressed the Planning Board. He explained the project, i.e. taking off the current roof/second floor and raising the roof to essentially make the dwelling a 2.5 story building.

Ms. Lauria questioned that the proposed construction would just be raising the dwelling, not changing the profile. Mr. Malloy said that was the case and presented the Board with photos of the dwelling in question as well as those of neighboring homes. Mr. Mikami stated that the dwelling in its current state was a 'Cape' style home. Mr. Malloy said yes it was and raising the roof would make it a 'Saltbox Colonial' to match the photo of the model he had presented.

Motion by Mr. Eng, second by Ms. Lauria to grant relief for raising roof and construction of full second story.

Vote: 5/0

Request for Interpretation by the Zoning Board of Appeals of the Building Inspector's Denial of a Request for Zoning Enforcement of Alleged Violations of the Town of Braintree Zoning Ordinance at 531 Pond Street.
#11-02

Neither the applicant, Roger Aiello, Trustee for Roger E. Aiello Revocable Trust, nor his Attorney, David A. Kellem, Kellem & Kellem LLP, 100 Recreation Park Drive Hingham, MA 02043, were present to address the Planning Board. The property in question is located at 531-533 Pond Street, Braintree, MA 02184.

Ms. Santucci referred to a letter provided by Attorney Kellem for the Planning Board which Attorney Kellem requested be read in to the record.

Motion by Mr. Reynolds, second by Mr. Eng to enter the letter into record.

Vote: 5/0

The Chair stated his feeling that without the Applicant or a representative of the Applicant present to address the Planning Board, he did not see how the board could take a vote on this issue with out an additional explanation or information.

Motion by Mr. Reynolds, second by Mr. Eng that no action be taken on this appeal at this time.

Vote: 5/0

Discussion Priscilla Avenue Definitive Subdivision (99-21)
Incomplete Public Improvements – Suggested Course of Action

Ms. Santucci addressed the Planning Board, informing them that she had spoken with Mrs. Watts and with Kevin Kane. She had urged Mr. Kane to attend tonight's meeting, however he has a snow removal company and due to the impending storm he was unable to make it.

She stated that there were a few outstanding items that Mr. Kane had said he would take care of. She told the Planning Board that there was an As-Built Plan on file, however she was not sure if this was totally accurate. There were various issues going back to 2001 and she would like to verify that these items were completed. She would like to conduct her own site visit Ms. Santucci provided some history on the outstanding issues including a visit done by the Town Engineer, when it was requested that the Sump Pumps be connected to the drainage system. No documentation has been supplied indicating that this has been completed. The Staff suggests a date of May 5, 2011 for the completion of all field work, as well as the submittal of As-Built and Street Acceptance Plans. It was mentioned that one course of action would be for the Planning Board advising the Staff to move towards default. The Staff would like to move forward having Mr. Kane complete the outstanding issues on this project. Mr. Eng voiced his support of that being the best direction.

Mr. Reynolds questioned if the document dated today encompasses an updated punch list. Ms. Santucci stressed her desire to perform her own inspection to determine what has been completed and what has not. Mr. Reynolds requested an up to date list of completed items, and voiced his desire to get Mr. Kane moving forward.

Carolyn Watts a former property owner addressed the Planning Board. She stated that in 2010 she went to sell her property, and that is when some of these issues were discovered. It is her belief that the Sump Pumps have not been connected to the drainage system. In addition, there had been some trees planted but these had been knocked down. Mr. Kane said that these would be replaced but to her knowledge, nothing has been done.

Motion by Mr. Eng, second by Ms. Lauria to go with the staff recommendations with the condition that Ms. Santucci will write to Mr. Kane and have him provide letters to all parties involved.

Vote: 5/0

Request for Lot Release
Almquist Estates/Elmlawn Road Ext. Definitive Subdivision (10-03)
Requested by Al Endriunas

Mr. Endriunas addressed the Planning Board with Mr. Mikami inquiring how things were going on the project. Mr. Endriunas assured the Planning Board that things were going well.

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Ms. Santucci informed the Planning Board that the Staff had received some phone calls from concerned neighbors about the project. They had met with these individuals and they appear to be okay with the project at this time. Their concerns had included drainage issues. The staff is satisfied with the installation to date.

Motion by Mr. Eng, second by Ms. Lauria to release the lots.
Vote: 5/0

Approval of Minutes for 11/16/2010 and 12/14/2010

Motion by Mr. Reynolds, second by Ms. Lauria to approve the Planning Board minutes from 11/16/2010 and 12/14/2010.
Vote: 5/0

Request for Partial Bond Reduction
Jonathan's Landing (04-09 Modification)
Request by Pulte Braintree, LLC

The packets provided to the Planning Board included pictures of the work done on the island. Mr. Reynolds commented that he had seen the work done prior to the recent snow fall and felt that they were to be commended on the work done thus far.

Ms. Santucci informed the Planning Board that there will be more work done this coming spring and that the Planning Staff supports the request for partial bond reduction.

Motion by Mr. Reynolds, second by Mr. Eng to approve the request for partial bond reduction.
Vote: 5/0

Motion by Mr. Reynolds, second by Mr. Eng to adjourn at 9:20 P.M.
Vote: 5/0

Respectfully submitted,

Beth A. Herlihy



Joseph C. Sullivan
Mayor

Department of Planning and Community Development

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PLANNING BOARD

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APPROVED

Braintree Planning Board
January 11, 2011 – Public Hearing @ 8:45 P.M.
Town Hall

Present:

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami
Michelle Lauria

Melissa Santucci, Principal Planner

79 Canavan Drive/Kristen Zechello
Application for Grading Permit
#10-09

The Chair opened the public hearing.

Robert E. Hannigan, Robert E. Hannigan Associates, the engineer for the Applicant addressed the Planning Board. Mr. Hannigan gave a brief description of the property at 79 Canavan Drive as a two level lot. He also gave a description of the proposed project. The Applicant is proposing to install an in ground swimming pool in the rear yard. There will be two retaining walls constructed of natural stone. These walls will utilize some stone from on site and some stone being imported to the lot for the project. Access to the site was also discussed. Mr. Hannigan informed the board that this project had been presented to the Conservation Commission also.

Motion by Mr. Reynolds, second by Ms. Lauria to accept the correspondence list dated 12/3/2010 through 1/11/2011.
Vote: 5/0

Mr. Mikami questioned Mr. Hannigan about the 'time line' of the project. Mr. Hannigan stated that when the project is approved, once the weather breaks the Applicant would like to move forward, with the pool being in place by this summer. He estimated about 45 days of construction. Mr. Mikami asked for more detail on the sequence of the project. Mr. Hannigan explained that the first step would be to clear the vegetation, then moving the soil and stockpiling it, this taking about one week.

Next the existing stones would be removed and as some are quite large, they would be 'cracked' to make them usable. Mr. Mikami wanted to know if cracking the stones would be neighbor friendly, and how long the process would take. Mr. Hannigan said that there would be no blasting and the cracking of the stone could be done in one day. The first wall would take about 1 ½ to 2 weeks to complete, the fill would then be brought in, taking a week or less, with the balance of the stone for the second wall to follow.

Mr. Mikami continued questioning Mr. Hannigan regarding the construction of the proposed pool. He wanted to know if the plan was to fill then dig for the pool. Mr. Hannigan said that they would partially fill, then the soil from the excavation for the pool would be used as the remaining fill. The pool is molded, and would be brought on site with concrete being used for the pool apron. Mr. Mikami wanted to know if the Conservation Commission was okay with the proposed construction and if there would be a fence. This is true for both cases.

Mr. Mikami also wanted to know if the Conservation Commission had any issues with water purification. Steven Zechello addressed the Planning Board explaining that he had been working with John of Coastal Pools located in Pembroke. They will be using a relatively new form of technology utilizing a salt/chlorine filter.

The subject of the time line was again raised. Mr. Hannigan said that the filling of the property depended on the size of the trucks being used and that it would last about 3 to 4 days. If larger trucks were used they could get 5 to 7 truck loads a day on site. If smaller trucks were being used it would be 12 to 16 truck loads a day. Mr. Mikami wanted to know if there was a dust plan in place.

Mr. Eng asked if the set backs for all the structures had been checked. Ms. Santucci informed him that the shed did meet the set back requirements and that the pool and decking concrete were underdimensional for regulations.

Mr. Eng asked Mr. Hannigan if all the Engineering support had been done and if he would submit the calculations of such for back up. Mr. Hannigan will provide all necessary back up information.

Mr. Eng did express concern that once approval of the project was granted, there then being an issue with the pool slipping. He inquired as to the depth of the pool. Mr. Zechello explained that the pool would be 5 ½ to 6 feet deep. Mr. Hannigan again assured the Planning Board that all structural calculations would be submitted.

Mr. Reynolds addressed the issue of Condition 6 in the Staff Report, regarding the construction of the two retaining walls. Ms. Santucci stated that she had spoken to the Applicants and the Engineer, and had tried to convince them to use a block wall form of construction as she wanted the construction process to continue seamlessly. Mr. Hannigan had concerns with the availability of space to store the stones needed for construction, so he had proposed 2 phases. i.e. constructing the first wall, fill, then construct the second wall. He believes this to be a reasonable compromise, allowing them to avoid delays and to stay on schedule.

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Motion by Mr. Reynolds, second by Mr. Eng to close the Public Hearing.
Vote: 5/0

Motion by Mr. Reynolds, second by Mr. Mikami to approve the Application for Grading Permit.
Vote: 5/0

Respectfully submitted,

Beth A. Herlihy